

# House . . . . . No. 4960

Message from His Excellency the Governor returning with recommendation of amendment the engrossed Bill relative to time-share ownership (see House, No. 4803).

## The Commonwealth of Massachusetts



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To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment House Bill No. 4803, "An Act Relative to Time-Share Ownership."

This bill broadens the scope of the lien that arises in the case of non-payment of time-share assessments by a unit owner. The lien extends to amounts owed for assessments, including all special assessments, late payment fees, fines and collection costs, including attorney's fees and collection agency costs. The bill also establishes procedures relating to the forfeiture of time-share units.

The bill gives priority to liens associated with time-share charges over previously recorded state tax and child support liens without limiting the amount or duration of the time-share assessment that is given priority. Current law limits the priority of liens for time-share assessments to the portion of the assessment coming due within six months of commencement of an action to enforce the lien. Additionally, assessments allowed in this bill with respect to time-share units are broader than those authorized for condominium associations.

I am concerned that the breadth of the lien provisions in this bill is not in the best financial interests of the Commonwealth. I therefore recommend that House Bill No. 4803 be amended by striking out the text of section 5 of the bill and inserting in place thereof the following text:-

SECTION 5. Said chapter 183B is hereby further amended by striking out section 29, as so appearing, and inserting in place thereof the following section:—

Section 29. (a) A person who has a duty to make assessments for time-share expenses shall have a lien on a time-share for any assessment levied against that time-share or fines imposed against its owner from the time the assessment or fine becomes due. In the case of either a time-share estate or a time-share license, the lien shall be enforced pursuant to section 29B. Unless the time-share instrument otherwise provides, fees, charges, late charges, fines, interest, collection agency fees and reasonable attorney's fees charged pursuant to clauses (8) and (9) of subsection (a) of section 20 shall be enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment thereof becomes due.

(b) A lien created under this section shall be prior to all other liens and encumbrances on a time-share except: (i) liens and encumbrances recorded before the recording of the time-share instrument; (ii) mortgages or security interests on the time-share recorded before the due date of the assessment or the due date of the first installment payable on the assessment; (iii) liens for real estate taxes and other governmental assessments or charges against the time-share; and (iv) liens for unpaid taxes of the owner collectible pursuant to chapter 62C, and liens for unpaid child support obligations of the owner collectible pursuant to chapter 119A, provided that liens for such taxes or child support obligations were recorded before the due date of the assessment or the due date of the first installment payable on the assessment. This subsection shall not affect the priority of mechanics' or materialmen's liens. Liens on a time share unit, arising under this section or otherwise, shall not be subject to chapter 188.

(c) The lien created under this section shall be automatic as a matter of law, but a claim or notice of lien may be recorded in the applicable registry of deeds for a time-share estate or as required in the controlling time-share instruments for a time-share. A lien shall be dissolved upon the issuance and recording of a statement by the association pursuant to subsection (e) showing no assessment to be due and owing.

(d) This section shall not prohibit actions to recover sums for which subsection (a) creates a lien or precludes an association from recourse by any contractual or other remedy permitted by law.

(e) The lien created under this section shall include costs, including collection agency fees, reasonable attorneys' fees and all forfeiture costs incurred by the association. A person who has a duty to make assessments for time-share expenses shall furnish to a time-share owner, purchaser, mortgagee or a closing attorney or settlement agent, upon written request, a statement recordable in form setting forth the amount of unpaid assessments currently levied against the owner's time-share and may charge a reasonable fee for the preparation of such statement. The statement shall be furnished within 10 business days after the receipt of the request. Any time-share owner, purchaser, mortgagee, or a closing attorney or settlement agent, who is a recipient of the

statement shall be entitled to rely on the contents thereof, and whoever furnished the statement may collect from such recipient only those sums of money that are set forth therein from the recipient; provided, however, that the recipient pays any amounts stated as due and owing and any amounts which subsequently may become due and owing within 60 days of the date of the statement, including collection charges, late fees, interest and additional assessments as stated therein.

(f) No time-share owner shall be exempt from liability for contribution toward the time-share liability expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of the time-share or otherwise; and no time-share owner shall be entitled to an offset, deduction or waiver of time-share liability expenses or other charges levied or lawfully assessed by the association.

Sincerely,

DEVAL L. PATRICK,

*Governor.*